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23869 7590 12/28/2009 HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791				
EXAMINER				
YOUNKINS, KAREN L				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/582,146

Applicant(s)

FOY, JEROME

Examiner

KAREN YOUNKINS

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 17-36, 38-44 and 46-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 17-36, 38-44, and 46-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. This action is responsive to the amendment dated 9/9/2009. Responsive to the amendment, claims 1-14, 17-36, 38-44, and 46-49 are currently pending.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-6, 8, 12-14, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by FR Patent 2709144 to Alain.

4. Regarding Claim 1, Alain teaches an above-ground swimming pool comprising structural paneling 34 having a top end and a bottom end defining a pool perimeter, a plurality of structural vertical posts 28 regularly spaced apart along the pool perimeter and retaining the structural paneling 34, a structural ledge 24 supported by the structural vertical posts 28 and retaining the structural paneling 34 at a top end thereof along the pool perimeter, and a plurality of decorative panels 27/37/39/38 installed so as to extend substantially from the top end to the bottom end of the structural paneling to substantially hide the structural paneling from view, see figure 1. Further, at least a portion of the plurality of decorative panels contacts the structural paneling.

5. Regarding Claims 2-4, as previously discussed in pp-4 above, further the swimming pool comprises a base member 1 retaining the structural paneling 34 at a

bottom end thereof along the pool perimeter. The base member 1 also retains the decorative panels 27/37/39/38 at the bottom end thereof along the pool perimeter. The structural ledge 24 retains the decorative panels 27/37/39/38 at the top end thereof along the pool perimeter.

6. Regarding claims 5-8, as previously discussed in pp-5 above, further a single decorative panel 37 extends between and is retained by adjacent structural vertical posts 28. A plurality of decorative panels 27/37/39/38 connected to one another extend between and are retained by adjacent structural vertical posts 28. The plurality of decorative panels 27/37/39/38 are connected to one another side by side and on top of the other, see figure 2.

7. Regarding claims 12-14, and 23, as previously discussed in pp-4 above, further the structural ledge 24 is hidden from view by a decorative ledge 18. The decorative ledge 18 retains the decorative panels 27/37/39/38 at the top end thereof along the pool perimeter. Each of the decorative panels 27/37/39/38 is shaped so as to mimic a series of wood boards. The decorative ledge is shaped 'so as to mimic' a plurality of wood boards to the extent claimed. The upper face of the ledge comprises of plurality of boards that 'mimic' the shape of a wood board.

8. Regarding claim 18, as previously discussed in pp-4 above, further the pool perimeter is polygonal, and the decorative panels 27/37/39/38 define a second polygonal pool perimeter in close relationship with the pool perimeter, see figure 1.

9. Claims 1, 4-14, 19, 22-33, 36-39, and 46-49 rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,795,986 to Marbach et al. (Marbach).

10. With reference to claims 1, 4-14, 19, and 22-23, and 46-49 Marbach teaches an above-ground swimming pool comprising structural paneling (1) having a top end and a bottom end defining a pool perimeter; a plurality of structural vertical posts (17) regularly spaced apart along the pool perimeter and retaining the structural paneling (see figure 1), a structural ledge (7) supported by the structural vertical posts and retaining the structural paneling at the top end thereof along the pool perimeter (see figure 1). The pool further comprises a plurality of decorative panels (12) installed so as to extend substantially from the top end to the bottom end of the structural paneling to substantially hide the structural paneling from view. The structural ledge retains the decorative panels at the top end thereof along the pool perimeter, see figure 1. Further, at least a portion of the plurality of decorative panels contact the structural paneling. The decorative panels include a support 13 extending therefrom, and the support engages the structural panels. The structural panels bend at corners of 12, in so much as the panels of the instant invention bend, to follow a perimeter formed by the structural paneling. The decorative panels contact the structural paneling at a location between the ends of the decorative panel.

A single decorative panel (one of the panels 12) extends between and is retained by adjacent structural vertical posts. Further, a plurality of decorative panels (12) are connected to one another extend between and are retained by adjacent structural vertical posts. The plurality of decorative panels are connected to one another side by side and one on top of the other, see the arrangement of the decorative panels (12) in figure 1. Each structural vertical post (17) is hidden from view by a decorative vertical

post (8). As such, both a single decorative panel and a plurality of decorative panels extend between and are retained by adjacent decorative vertical posts. The structural ledge (7) is hidden from view by a decorative ledge (15). The decorative ledge retains the decorative panels at the top end thereof along the pool perimeter, see figure 1.

Each of the decorative panels is shaped so as to 'mimic a series of horizontal wood boards' to the extent claimed as the plurality of decorative panels are shaped like a common wood board, have the external appearance of wood (see column 2 lines 26-28) and lie horizontally on top of one another. Each of the decorative panels is shaped 'so as to mimic a series of vertical wood boards' to the extent claimed as the plurality of decorative panels are shaped like a common wood board, have the external appearance of wood (see column 2 lines 26-28), and are installed vertically one on top of the other. Each of the decorative panels (12) is shaped so as to mimic a single wood board, see figure 1. The decorative panels are installed so as to obtain a second perimeter having a different shape than the pool perimeter, see figure 2. 22.

Each decorative vertical post is shaped 'so as to mimic at least one wood board' to the extent claimed as the decorative vertical posts (8) are of the shape of a common wood board, see figure 1. The decorative ledge (15) is shaped 'so as to mimic a plurality of wood boards' in so much as the decorative ledge comprises a plurality of pieces each shaped like a common wood board.

11. With reference to claims 24-33, and 36, Marbach teaches a decorating kit for an existing above-ground swimming pool, the swimming pool including structural paneling (1), a plurality of structural vertical posts (17) and a top structural ledge (7). the kit

comprises a plurality of decorative vertical posts (8) designed to be attached over the structural vertical posts so as to substantially hide the structural vertical posts from view (see figure 1), a plurality of decorative panels (12) designed to be retained by adjacent decorative vertical posts so as to substantially hide the structural paneling from view (see figure 1), at least a portion of the decorative panels contacting the structural paneling; and a decorative ledge (15) designed to be attached to the decorative vertical posts so as to substantially hide the top structural ledge from view. The decorative ledge (15) retains the decorative panels (12) at a top end thereof, see figure 1. Each decorative panel (12) is composed of a plurality of smaller panels connected to one another and is shaped 'so as to mimic a single wood board' (see figure 1).

The plurality of smaller panels are connected to one another side by side and one on top of the other. Each of the decorative panels is shaped so as to 'mimic a series of horizontal wood boards' to the extent claimed as the plurality of decorative panels are shaped like a common wood board, have the external appearance of wood (see column 2 lines 26-28) and lie horizontally on top of one another. Each of the decorative panels is shaped 'so as to mimic a series of vertical wood boards' to the extent claimed as the plurality of decorative panels are shaped like a common wood board, have the external appearance of wood (see column 2 lines 26-28), and are installed vertically one on top of the other. The structural paneling (1) defines a pool perimeter, and the decorative panels are at least in partial contact with the structural paneling so as to define a second pool perimeter (along the edge of the decorative panels) in close relationship to the pool perimeter. The decorative panels (12) are

installed so as to obtain a second perimeter having a different shape than the pool perimeter, see figure 2.

Each decorative vertical post (8) is shaped 'so as to mimic at least one wood board' as they are shaped like a common wood board. The decorative ledge is shaped 'so as to mimic a plurality of wood boards' as it is comprised of a plurality of pieces each having the shape of a common wood board.

12. With reference to claims 38, and 39, the method step of installing the swimming pool structure as claimed and described in pp-10 and pp-11 above is met during the normal installation of Marbach. The decorative panels include supports 13 extending therefrom. The supports engage the structural paneling when the decorative panels are installed over the structural paneling.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alain.

15. As previously discussed in pp-4 above, further Alain fails to show the pool perimeter being round and the decorative panels define a second round perimeter in close relationship with the pool perimeter. Alain also fails to show the decorative panels installed so as to obtain a second perimeter having a different shape than the pool

perimeter. Instead, Alain teaches the perimeter being in a polygonal shape that is substantially circular wherein the decorative panels are in partial contact with the structural paneling to define a second perimeter in a close relationship with the pool perimeter. The shape of the second perimeter substantially matches the shape of the pool perimeter.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the pool perimeter and second perimeter to be round in shape as claimed as an alternate shape construction. Round pool perimeters are commonly known in the art of pools. It would have been further obvious to have modified the second perimeter to have a different shape than that of the pool perimeter as a matter of design choice, since the second perimeter is the outer surface of the pool which a user will see the user may wish to see a different shape than the structural pool perimeter shape.

16. Claims 7, 28, 31, and 38-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marbach.

17. With reference to claims 7, as previously discussed in pp-10 above, further Marbach fails to show the plurality of decorative panels connected to one another side by side and shaped so as to mimic a series of vertical wood boards. Instead, Marbach shows the plurality of decorative panels connected to one another one of top of the other.

It would be obvious to one having ordinary skill in the art at the time of the invention to have made the decorative panels of Marbach connected side by side

therefore making them 'mimic a series of vertical wood boards' because the intent of the decorative panels was to enhance to look of the design, and making it look like vertical wood would have been a simple aesthetic change to allow the decorative panels to have the known wood look, just in a different direction.

18. With reference to claims 28 and 31, as previously discussed in pp-11 above, further Marbach as modified in pp-17 above teaches the plurality of smaller panels connected to one another side by side and the decorative panels being shaped 'so as to mimic a series of horizontal wood boards'.

19. In reference to claim 38, Marbach teaches the structure of vertical posts/structural paneling/decorative panels as claimed.

Marbach fails to teach the specific method steps of installing a plurality of structural vertical posts in a regularly spaced-apart manner along a desired pool perimeter; installing structural paneling along the desired pool perimeter so that the structural paneling is retained by the vertical posts; installing a structural ledge defining the desired pool perimeter on top of the vertical posts, the structural ledge retaining the structural paneling along a top end thereof; and installing a plurality of decorative panels over the structural paneling so that the structural paneling is substantially hidden from view.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have assembled the pool of Marbach with the method steps of installing the pool structure as claimed to provide a working pool for a user to swim in.

20. In reference to claim 39, as previously discussed in pp-19 above, further a plurality of decorative panels (12) are installed so as to be retained by the structural vertical posts (17), see figure 1.

21. In reference to claim 40, the decorative panels (12) are installed wherein a plurality of the decorative vertical post is installed over a structural post such that the panel is connected on either edge by first and second decorative vertical posts (see figure 1). Therefore it would have been further obvious to have made the method step of installing the decorative panels as claimed.

22. In reference to claims 41 and 42, Marbach teaches a decorative ledge installed over a structural ledge as claimed. Therefore it would have been obvious to have included the step of installing a decorative ledge (15) over the structural ledge (7) so as to hide the structural ledge from view. The decorative ledge (15) is installed so as to retain the decorative panels (12) along a top end thereof, see figure 1.

23. Claims 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marbach in view of Alain.

24. As previously discussed in pp-19 above, further Marbach fails to show a step of installing a base member along the pool perimeter being performed, and the structural paneling is installed so as to be retained also by the base member. Marbach further fails to show the decorative panels installed so as to be retained by the base member.

Alain teaches a base member (1) which is installed along the pool perimeter. Structural paneling 34 is installed so as to be retained by the base member, see figure

4. Further, the decorative panels 27/37/39/38 are installed to as to be retained by the base member, see figure 4.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the pool of Marbach to include a base with the structure as claimed to protect the ground which the pool sits on from damage. Therefore, it would have been obvious to have installed the base member as claimed to properly be able to use the pool.

25. Claims 20, 21,34, 35 are rejected under 35 U.S.C 103(a) as being unpatentable over Marbach in view of US Patent No. 5,866,264 to Zehner (Zehner).

26. Regarding Claims 20 and 34, as previously discussed in pp-10 and pp-11 above, further Marbach fails to show the decorative panels being made from extruded plastic. Instead, Marbach teaches the panels made of a wood/polymer material.

Zehner teaches an extruded plastic material that is used to replace wood, see column 1 lines 40-50.

It would have been obvious to one having ordinary skill in the art at the time of the invention to have made the incorporated the synthetic wood of Zehner into the design of Marbach because not only is synthetic wood cheaper, Zehner teaches that the synthetic wood is suitable for use in place of wood (column 1, lines 5-10) such as is used in Marbach.

27. Regarding Claims 21 and 35, Marbach as modified in pp-26 above teaches the decorative panels made from thermoformed plastic (column 1, lines 40-50).

Response to Arguments

28. Applicant's arguments filed 9/9/2009 have been fully considered but they are not persuasive.

29. On page 11 the applicant has asserted that Alain does not teach the decorative panels do not extend between a top end and a bottom end of the structural paneling as in the amended claim 1. However, it is respectfully submitted that the decorative panels of Alain extend up and down in a vertical direction along the structural paneling. Thus, they do extend between a top end and a bottom end of the structural paneling as discussed in the rejection above.

30. On page 12 the applicant has asserted that Marbach fails to teach the amended claim language "at least a portion of the plurality of decorative panels contacting the structural paneling". However, it is respectfully submitted that the decorative panels do contact the paneling via their association in 8.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAREN YOUNKINS whose telephone number is (571)270-7417. The examiner can normally be reached on Monday through Friday 7:30am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571)272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. Y./
Examiner, Art Unit 3751

/Gregory L. Huson/
Supervisory Patent Examiner, Art Unit 3751